

AMENDED IN ASSEMBLY APRIL 16, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1670

Introduced by Assembly Member Mendoza

February 23, 2007

An act to amend Sections 17900, 17903, 17910, 17911, 17913, 17914, 17915, 17917, 17922, 17923, 17926, 17927, and 17929 of the Business and Professions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 1670, as amended, Mendoza. Fictitious business name statements.

Existing law requires every person who regularly transacts business in California for profit under a fictitious business name to file and maintain a current fictitious business name statement. Existing law requires a fictitious business name statement to contain specified information, to be published in a newspaper of general circulation in the county in which the principal place of business of the registrant is located, except as specified, and to be signed as specified with the county clerk where the business is located. Existing law also requires a statement of abandonment of a fictitious name to include certain information. Existing law authorizes a county clerk to charge specified fees for filing a fictitious business name, supplying a certified copy of the statement to a registrant, or filing a statement of withdrawal, and authorizes a county clerk to destroy a fictitious business name statement 4 years after its expiration. Under existing law, a person who knowingly executes, files, or publishes a false statement under the provisions regulating fictitious business names is guilty of a crime.

This bill would revise the conditions under which a new fictitious business name must be filed, and would revise the content of a fictitious

business form statement. The bill would revise the signature requirements for a registrant, including specifying signature requirements for a husband and wife or for domestic partners, and would allow a person to also file a fictitious business name statement in a county other than where the registrant's principal place of business is located, as specified. The bill would instead require the publication of a statement in a newspaper of general circulation in the county where the fictitious business name was filed or, under certain conditions, in an adjoining county to where the fictitious business name statement was filed. The bill would also require a statement of abandonment to include the file number of the fictitious business name statement, and would revise the information required on a statement of abandonment.

This bill would revise the fees that the county clerk may charge for a certified copy of a statement, the filing of a fictitious business name, or the filing of a statement of withdrawal to include an amount sufficient to pay the costs of providing the services, and would allow a county clerk to establish an additional fee sufficient to pay the cost of notifying registrants of pending expiration of statements. The bill would allow destruction of proof of publication of a statement and other references related to the fictitious business name at the same time as the clerk may destroy the statement of a fictitious business name. Because the bill would expand the crime of filing a false statement by revising the requirements for a statement, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17900 of the Business and Professions
- 2 Code is amended to read:
- 3 17900. (a) The purpose of this section is to protect those
- 4 dealing with individuals or partnerships doing business under
- 5 fictitious names, and it is not intended to confer right or advantage
- 6 on individuals or firms that fail to comply with the law. The filing

1 of a fictitious business name certificate is designed to make
2 available to the public; the identities of persons doing business
3 under the fictitious name.

4 (b) As used in this chapter, “fictitious business name” means:

5 (1) In the case of an individual, a name that does not include
6 the surname of the individual or a name that suggests the existence
7 of additional owners, as described in subdivision (c).

8 (2) In the case of a partnership or other association of persons,
9 other than a limited partnership that has filed a certificate of limited
10 partnership with the Secretary of State pursuant to Section 15621
11 or 15902.01 of the Corporations Code, a foreign limited partnership
12 that has filed an application for registration with the Secretary of
13 State pursuant to Section 15692 or 15909.02 of the Corporations
14 Code, a registered limited liability partnership that has filed a
15 registration pursuant to Section 15049 or 16953 of the Corporations
16 Code, or a foreign limited liability partnership that has filed an
17 application for registration pursuant to Section 15055 or 16959 of
18 the Corporations Code, a name that does not include the surname
19 of each general partner or a name that suggests the existence of
20 additional owners, as described in subdivision (c) and in Section
21 17901.

22 (3) In the case of a domestic or foreign corporation, any name
23 other than the corporate name stated in its articles of incorporation
24 filed with the Secretary of State, in accordance with subdivision
25 (a) of Section 17910.5.

26 (4) In the case of a limited partnership that has filed a certificate
27 of limited partnership with the Secretary of State pursuant to
28 Section 15621 or 15902.01 of the Corporations Code and in the
29 case of a foreign limited partnership that has filed an application
30 for registration with the Secretary of State pursuant to Section
31 15692 or 15902.02 of the Corporations Code, any name other than
32 the name of the limited partnership as on file with the Secretary
33 of State.

34 (5) In the case of a limited liability company, any name other
35 than the name stated in its articles of organization, and in the case
36 of a foreign limited liability company that has filed an application
37 for registration with the Secretary of State pursuant to Section
38 17451 of the Corporations Code, any name other than the name
39 of the limited liability company as on file with the Secretary of
40 State, in accordance with subdivision (b) of Section 17910.5.

(c) A name that suggests the existence of additional owners within the meaning of subdivision (b) is one that includes such words as “Company,” “& Company,” “& Son,” “& Sons,” “& Associates,” “Brothers,” and the like, but not words that merely describe the business being conducted.

SEC. 2. Section 17903 of the Business and Professions Code is amended to read:

17903. As used in this chapter, “registrant” means a person or entity who is filing or has filed a fictitious business name statement, and who is the legal owner of the business.

SEC. 3. Section 17910 of the Business and Professions Code is amended to read:

17910. Every person who regularly transacts business in this state for profit under a fictitious business name shall do all of the following:

(a) File a fictitious business name statement in accordance with this chapter not later than 40 days from the time the registrant commences to transact such business.

(b) File a new statement after any change in the facts, in accordance with subdivision (b) of Section 17920.

(c) File a new statement when refile a fictitious business name statement.

SEC. 4. Section 17911 of the Business and Professions Code is amended to read:

17911. This chapter does not apply to a nonprofit corporation or association, including, but not limited to, organizations such as churches, labor unions, fraternal and charitable organizations, foundations, and similar organizations.

SEC. 5. Section 17913 of the Business and Professions Code is amended to read:

17913. (a) The fictitious business name statement shall contain all of the information required by this subdivision and shall be substantially in the following form:

FICTITIOUS BUSINESS NAME STATEMENT

The following person (persons) is (are) doing business as

* _____

at ** _____:

*** _____

1 _____
2 _____
3 This business is conducted by ****

4 The registrant commenced to transact business under the fictitious busi-
5 ness name or names listed above on

6 *****

7 I declare that all information in this statement is true and correct.(A reg-
8 istrant who declares as true information which he or she knows to be false is
9 guilty of a crime.)

10 Signed _____

11 Statement filed with the County Clerk of _____ County on _____
12
13

14 NOTICE— IN ACCORDANCE WITH SUBDIVISION (a) OF
15 SECTION 17920, A FICTITIOUS NAME STATEMENT
16 GENERALLY EXPIRES AT THE END OF FIVE YEARS FROM
17 THE DATE ON WHICH IT WAS FILED IN THE OFFICE OF
18 THE COUNTY CLERK, EXCEPT, AS PROVIDED IN
19 SUBDIVISION (b) OF SECTION 17920, WHERE IT EXPIRES
20 40 DAYS AFTER ANY CHANGE IN THE FACTS SET FORTH
21 IN THE STATEMENT PURSUANT TO SECTION 17913
22 OTHER THAN A CHANGE IN THE RESIDENCE ADDRESS
23 OF A REGISTERED OWNER. A NEW FICTITIOUS BUSINESS
24 NAME STATEMENT MUST BE FILED BEFORE THE
25 EXPIRATION.

26 THE FILING OF THIS STATEMENT DOES NOT OF ITSELF
27 AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS
28 BUSINESS NAME IN VIOLATION OF THE RIGHTS OF
29 ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW
30 (SEE SECTION 14411 ET SEQ., BUSINESS AND
31 PROFESSIONS CODE).

32 (b) The statement shall contain the following information set
33 forth in the manner indicated in the form provided by subdivision
34 (a):

35 (1) Where the asterisk (*) appears in the form, insert the
36 fictitious business name or names. Only those businesses operated
37 at the same address and under the same ownership may be listed
38 on one statement.

39 (2) Where the two asterisks (**) appear in the form: If the
40 registrant has a place of business in this state, insert the street

1 address of his or her principal place of business in this state. If the
2 registrant has no place of business in this state, insert the street
3 address of his or her principal place of business outside this state.

4 (3) Where the three asterisks (***) appear in the form: If the
5 registrant is an individual, insert his or her full name and residence
6 address. If the registrants are husband and wife, insert the full name
7 and residence address of both the husband and the wife. If the
8 registrant is a general partnership, copartnership, joint venture,
9 limited liability partnership, or unincorporated association other
10 than a partnership, insert the full name and residence address of
11 each general partner. If the registrant is a limited partnership, insert
12 the full name and residence address of each general partner. If the
13 registrant is a limited liability company, insert the name and
14 address of the limited liability company, as set out in its articles
15 of organization on file with the Secretary of State, and the state of
16 organization. If the registrant is a trust, insert the full name and
17 residence address of each trustee. If the registrant is a corporation,
18 insert the name and address of the corporation, as set out in its
19 articles of incorporation on file with the Secretary of State, and
20 the state of incorporation. If the registrants are state or local
21 registered domestic partners, insert the full name and residence
22 address of each domestic partner.

23 (4) Where the four asterisks (****) appear in the form, insert
24 whichever of the following best describes the nature of the
25 business: (i) “an individual,” (ii) “a general partnership,” (iii) “a
26 limited partnership,” (iv) “a limited liability company,” (v) “an
27 unincorporated association other than a partnership,” (vi) “a
28 corporation,” (vii) “a trust,” (viii) “copartners,” (ix) “husband and
29 wife,” (x) “joint venture,” (xi) “state or local registered domestic
30 partners,” or (xii) “a limited liability partnership.”

31 (5) Where the five asterisks (*****) appear in the form, insert
32 the date on which the registrant first commenced to transact
33 business under the fictitious business name or names listed, if
34 already transacting business under that name or names. If the
35 registrant has not yet commenced to transact business under the
36 fictitious business name or names listed, insert the statement, “Not
37 applicable.”

38 (c) The registrant shall declare that all of the information in the
39 statement is true and correct. A registrant who declares as true any

1 material matter pursuant to this section that he or she knows to be
2 false is guilty of a misdemeanor.

3 SEC. 6. Section 17914 of the Business and Professions Code
4 is amended to read:

5 17914. The statement shall be signed as follows:

6 (a) If the registrant is an individual, the statement shall be signed
7 by the individual.

8 (b) If the registrants are husband or wife, by the husband and
9 wife.

10 (c) If the registrant is a general partnership, limited partnership,
11 limited liability partnership, copartnership, joint venture, or
12 unincorporated association other than a partnership, by a general
13 partner.

14 (d) If the registrant is a limited liability company, by a manager
15 or officer.

16 (e) If the registrant is a trust, by a trustee.

17 (f) If the registrant is a corporation, by an officer.

18 (g) If the registrant is a state or local registered domestic
19 partnership, by one of the domestic partners.

20 SEC. 7. Section 17915 of the Business and Professions Code
21 is amended to read:

22 17915. The fictitious business name statement shall be filed
23 with the clerk of the county in which the registrant has his or her
24 principal place of business in this state or, if the registrant has no
25 place of business in this state, with the Clerk of Sacramento
26 County. Nothing in this chapter shall preclude a person from filing
27 a fictitious business name statement in a county other than that
28 where the principal place of business is located, as long as the
29 requirements of this subdivision are also met.

30 SEC. 8. Section 17917 of the Business and Professions Code
31 is amended to read:

32 17917. (a) Within 30 days after a fictitious business name
33 statement has been filed pursuant to this chapter, the registrant
34 shall cause a statement in the form prescribed by subdivision (a)
35 of Section 17913 to be published pursuant to Section 6064 of the
36 Government Code in a newspaper of general circulation in the
37 county where the fictitious business name statement was filed or,
38 if there is no such newspaper in that county, in a newspaper of
39 general circulation in an adjoining county. If the registrant does
40 not have a place of business in this state, the notice shall be

1 published in a newspaper of general circulation in Sacramento
2 County.

3 (b) Subject to the requirements of subdivision (a), the newspaper
4 selected for the publication of the statement should be one that
5 circulates in the area where the business is to be conducted.

6 (c) If a refiling is required because the prior statement has
7 expired, the refiling need not be published unless there has been
8 a change in the information required in the expired statement,
9 provided the refiling is filed within 40 days of the date the
10 statement expired.

11 (d) An affidavit showing the publication of the statement shall
12 be filed with the county clerk where the fictitious business name
13 statement was filed within 30 days after the completion of the
14 publication.

15 SEC. 9. Section 17922 of the Business and Professions Code
16 is amended to read:

17 17922. (a) Upon ceasing to transact business in this state under
18 a fictitious business name that was filed in the previous five years
19 a person who has filed a fictitious business name statement shall
20 file a statement of abandonment of use of fictitious business name.
21 The statement shall be executed in the same manner as a fictitious
22 business name statement and shall be filed with the county clerk
23 of the county in which the person has filed his or her fictitious
24 business name statement. The statement shall be published in the
25 same manner as a fictitious business name statement and an
26 affidavit showing its publication shall be filed with the county
27 clerk after the completion of publication.

28 (b) The statement shall include:

29 (1) The name being abandoned and the street address of the
30 principal place of business.

31 (2) The date on which the fictitious business name statement
32 relating to the fictitious business name being abandoned was filed,
33 the file number, and the county where filed.

34 (3) In the case of an individual, the full name and residence
35 address of the individual.

36 (4) In the case of a husband and wife, the full name and
37 residence address of both the husband and the wife.

38 (5) In the case of a general partnership, a limited partnership,
39 copartners, a limited liability partnership, a joint venture, or an

1 unincorporated association other than a partnership, the full names
2 and residence addresses of all of the general partners.

3 (6) In the case of a corporation, the name and address of the
4 corporation as set forth in its articles of incorporation on file with
5 the Secretary of State.

6 (7) In the case of a trust, the full name and residence address of
7 each of the trustees.

8 (8) In the case of a limited liability company, the name and
9 address of the limited liability company as set forth in its articles
10 of organization on file with the Secretary of State.

11 (9) In the case of state or local registered domestic partners, the
12 full name and residence address of each domestic partners.

13 SEC. 10. Section 17923 of the Business and Professions Code
14 is amended to read:

15 17923. (a) Any person who is a general partner in a partnership
16 that is or has been regularly transacting business under a fictitious
17 business name may, upon withdrawing as a general partner, file a
18 statement of withdrawal from the partnership operating under a
19 fictitious business name. The statement shall be executed by the
20 person filing the statement in the same manner as a fictitious
21 business name statement and shall be filed with the county clerk
22 of the county where the partnership filed its fictitious business
23 name statement.

24 (b) The statement shall include:

25 (1) The fictitious business name of the partnership.

26 (2) The date on which the fictitious business name statement
27 for the partnership was filed, the file number, and the county where
28 filed.

29 (3) The street address of its principal place of business in this
30 state or, if it has no place of business in this state, the street address
31 of its principal place of business outside this state, if any.

32 (4) The full names and residence addresses of the person or
33 persons withdrawing as partners.

34 (c) The statement of withdrawal from the partnership operating
35 under a fictitious business name shall be published in the same
36 manner as the fictitious business name statement and an affidavit
37 showing the publication of the statement shall be filed with the
38 county clerk after the completion of the publication.

39 (d) The withdrawal of a general partner does not cause a
40 fictitious business name statement to expire if the withdrawing

1 partner files a statement of withdrawal meeting the requirements
2 of this section.

3 SEC. 11. Section 17926 of the Business and Professions Code
4 is amended to read:

5 17926. (a) As used in this section, “statement” means a
6 fictitious business name statement, a statement of abandonment
7 of use of fictitious business name, or a statement of withdrawal
8 from partnership operating under fictitious business name.

9 (b) For a fee of two dollars (\$2), or an amount sufficient to pay
10 the actual cost of providing this service, the county clerk shall
11 provide any person who so requests a certified copy of any
12 statement on file in his or her office.

13 (c) A copy of a statement, when certified as provided in
14 subdivision (b), establishes a rebuttable presumption of all of the
15 following:

16 (1) The existence of the original statement.

17 (2) The execution of the statement by the person by whom it
18 purports to have been executed.

19 (3) The truth of the information required by Sections 17913,
20 17922, or 17923 that is contained in the statement.

21 (d) The presumptions established by subdivision (c) are
22 presumptions affecting the burden of producing evidence.

23 SEC. 12. Section 17927 of the Business and Professions Code
24 is amended to read:

25 17927. (a) The county clerk shall mark each fictitious business
26 name statement with a file number and the date of filing and shall
27 retain the original statement for his or her file. He or she may
28 destroy or otherwise dispose of the statement, including proof of
29 publication and any other references related to the fictitious
30 business name statement, four years after the statement expires.

31 (b) The county clerk shall mark each statement of abandonment
32 of use of fictitious business name or statement of withdrawal from
33 partnership operating under fictitious business name with a file
34 number and the date of filing. He or she may destroy or otherwise
35 dispose of the statement at the same time the fictitious business
36 name statement to which it relates is destroyed pursuant to
37 subdivision (a).

38 (c) In lieu of retaining the original statement on file, the county
39 clerk may retain a copy of the statement in accordance with Section
40 ~~68150~~ 26205.1 of the Government Code.

1 SEC. 13. Section 17929 of the Business and Professions Code
2 is amended to read:

3 17929. (a) The fee for filing a fictitious business name
4 statement is ten dollars (\$10), or an amount sufficient to pay the
5 actual cost of providing this service, for the first fictitious business
6 name and owner and two dollars (\$2), or an amount sufficient to
7 pay the actual cost of providing this service, for each additional
8 fictitious business name or owner filed on the same statement and
9 doing business at the same location. This fee covers the cost of
10 filing and indexing the statement (and any affidavit of publication),
11 furnishing one certified copy of the statement to the person filing
12 the statement.

13 (b) The county clerk may establish an additional charge
14 sufficient to pay the actual cost of notifying registrants of the
15 pending expiration of their fictitious business name statements.

16 (c) The fee for filing a statement of abandonment of use of a
17 fictitious business name is five dollars (\$5), or an amount sufficient
18 to pay the actual cost of providing this service. This fee covers the
19 cost of filing and indexing the statement, any affidavit of
20 publication, and furnishing one certified copy of the statement to
21 the person filing the statement.

22 (d) The fee for filing a statement of withdrawal from partnership
23 operating under fictitious business name is five dollars (\$5), or an
24 amount sufficient to pay the actual cost of providing this service.
25 This fee covers the cost of filing and indexing the statement, any
26 affidavit of publication, and furnishing one certified copy of the
27 statement to the person filing the statement.

28 SEC. 14. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.